

***C.P. v. Blue Cross Blue Shield of Illinois***  
**USDC (W.D. Wash.), No. 3:20-cv-06145-RJB**

**CONFIDENTIAL EXHIBIT**

**Filed Under Seal**  
**Pursuant to Protective Order (Dkt. No. 25)**

**Exhibit 4**

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May 13, 2022

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF F WASHINGTON  
AT TACOMA

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C.P., by and through his parents, )  
Patricia Pritchard and Nolle )  
Pritchard and PATRICIA PRITCHARD, )  
Plaintiffs, )  
vs. ) No. 3:20-cv-06145-RJB  
BLUE CROSS BLUE SHIELD OF )  
ILLINOIS, )  
Defendant. )

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ZOOM VIDEO DEPOSITION UPON ORAL EXAMINATION

OF  
TELISA DRAKE 30(B) (6)

9:30 a.m.

May 13, 2022

REPORTED BY: Pat Lessard, CCR #2104

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1 A P P E A R A N C E S

2

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2 A P P E A R A N C E S

3

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14 ALSO PRESENT:

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## 1 EXAMINATION

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## 4 EXHIBIT INDEX

5 No. DESCRIPTION PAGE

6 Exhibit 1 Amended Notice of Rule 30(b) 6 10

7 Deposition of Blue Cross Blue

8 Shield of Illinois.

9 Exhibit 2 2019 Catholic Health Initiatives 50

10 Summary Plan Description.

11 Exhibit 3 Blue Cross Blue Shield 34

12 Administrative Services Agreement.

13 Exhibit 4 2016 Benefit Program Application. 88

14 Exhibit 5 2017 Benefit Program Application. 92

15 Exhibit 7 4/21/17 letter from Blue Cross 118

16 Blue Shield of Illinois to

17 Patricia Pritchard re treatment

18 for transgender services.

19 Exhibit 8 2018 Benefit Program Application. 96

20 Exhibit 9 2019 Benefit Program Application. 110

21 Exhibit 10 2020 Benefit Program Application. 111

22 Exhibit 11 2021 Benefit Program Application. 115

23 Exhibit 12 2017 Catholic Health Initiatives 79

24 Medical Plan.

25

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1 E X H I B I T I N D E X

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## 1 E X H I B I T I N D E X

| 2   | 3          | 4                                  | 5                             | 6                             | 7                                | 8                 | 9          | 10                                | 11                          | 12       | 13         | 14                               | 15                    | 16         | 17                                 | 18              | 19         | 20                              | 21                   | 22         | 23                      | 24         | 25                                | PAGE                               |                       |            |                                  |                  |    |
|-----|------------|------------------------------------|-------------------------------|-------------------------------|----------------------------------|-------------------|------------|-----------------------------------|-----------------------------|----------|------------|----------------------------------|-----------------------|------------|------------------------------------|-----------------|------------|---------------------------------|----------------------|------------|-------------------------|------------|-----------------------------------|------------------------------------|-----------------------|------------|----------------------------------|------------------|----|
| No. | Exhibit 23 | 3/20/17 email from Telisa Drake to | Kimberly Norton and others re | Gender Assignment Surgery and | Gender Reassignment surgery with | Related Services. | Exhibit 24 | Email from Trisha Beal to Michael | Hines and others re 2018 TG | denials. | Exhibit 25 | Redacted document re Transgender | Reassignment Surgery. | Exhibit 26 | 4/24/17 internal system screenshot | re CP services. | Exhibit 27 | 10/14/16 internal screenshot re | prescription for CP. | Exhibit 28 | Dashboard Notes for CP. | Exhibit 29 | 2/2/18 email from Telisa Drake to | Kimberly Norton and others re BCBS | Standard Plans draft. | Exhibit 40 | Document titled Your Health Care | Benefit Program. | 42 |

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1 Q. But Blue Cross Blue Shield of Illinois  
2 reviewed and administered it, correct?

3 A. That is correct.

4 Q. And is the term "transgender reassignment  
5 surgery" defined?

6 A. Within their documents?

7 Q. Yes.

8 A. It is not.

9 Q. Okay. And where would someone have to go to  
10 find what is included as transgender reassignment  
11 surgery and the services leading to it?

12 A. That also would result more than likely from  
13 a call from the member to our customer advocates, and  
14 they would be directed to our medical policy.

15 Q. Okay. And does Blue Cross Blue Shield of  
16 Illinois administer the transgender reassignment  
17 surgery exclusion -- does it treat the word "gender  
18 reassignment surgery" and "transgender reassignment  
19 surgery" as the same?

20 MS. PAYTON: Object to the form.

21 A. Can you clarify your question?

22 Q. (By Ms. Hamburger) Yes. From Blue Cross  
23 Blue Shield of Illinois's perspective is there a  
24 difference between gender reassignment surgery and  
25 transgender reassignment surgery?

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1           A.     The exclusion of the benefit.

2           Q.     (By Ms. Hamburger)   So I got that they  
3     pulled ten exclusions.

4                   Are they considered to be representative of  
5     the types of exclusions that Blue Cross Blue Shield  
6     administers for gender-affirming care?

7                   MS. PAYTON:   Object to the form.

8           A.     Yes.   These exclusions would be administered  
9     under the ASO plans based upon the verbiage that is  
10    listed within this chart.

11          Q.     (By Ms. Hamburger)   And so let's go through  
12    it.

13          The first one, what is your understanding of  
14    the first exclusion?

15          A.     So the one effective dated 1/01 of 2017?

16          Q.     Yes.

17          A.     In an operational world, which is what I can  
18    speak to, gender reassignment surgery including  
19    related services and supplies would not be covered  
20    because it was listed under the exclusion.

21          Q.     So it's my understanding from talking with  
22    your counsel that the first one represents the  
23    Blue Cross Blue Shield of Illinois standard language  
24    when asked by an ASO client to write the exclusion.

25                   Is that your understanding?

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1 A. Yes.

2 Q. Okay. So the first one is the Blue Cross  
3 Blue Shield of Illinois standard language for  
4 exclusions of gender reassignment surgery?

5 MS. PAYTON: Object to the form.

6 A. Yes.

7 Q. (By Ms. Hamburger) I labeled these one  
8 through ten. There's ten here --

9 A. Okay.

10 Q. -- so I'm going to go through them that way  
11 because it's easier to identify them. Okay?

12 Would you take a look at the second  
13 exclusion and only the part -- so the first paragraph,  
14 can you take a look at that one?

15 A. Yes.

16 Q. Okay. Is this another type of exclusion  
17 that Blue Cross Blue Shield of Illinois administers?

18 A. Yes.

19 Q. And is this also a blanket exclusion related  
20 to gender dysphoria?

21 MS. PAYTON: Object to the form.

22 A. Based on the language, yes.

23 Q. (By Ms. Hamburger) So let's go back to the  
24 first one.

25 Is the first one a blanket exclusion of

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1 treatment for gender dysphoria?

2 MS. PAYTON: Object to the form.

3 A. This would be a blanket exclusion for gender  
4 reassignment surgery.

5 Q. (By Ms. Hamburger) And related services and  
6 supplies, right?

7 A. Correct.

8 Q. And to understand where the line is drawn  
9 for what's considered gender reassignment surgery and  
10 related services and supplies, where would we look?

11 A. In the medical policy manual.

12 Q. Okay. The second two paragraphs in number  
13 two, those don't relate to medical benefits, right?

14 A. That is accurate.

15 Q. Okay. The third one, can you take a look at  
16 that?

17 A. Yes.

18 Q. Now the third one provides some coverage for  
19 gender reassignment surgery, right?

20 A. That is accurate.

21 Q. But does it impose a limitation?

22 A. Yes, it does.

23 Q. And that is a financial limitation, right?

24 A. Based on the language, yes.

25 Q. Okay. So is that a blanket exclusion?

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1 MS. PAYTON: Object to the form.

2 A. It is not a blanket exclusion.

3 Q. (By Ms. Hamburger) Okay. So it's a form of

4 financial limitation, right?

5 A. You're accurate, yes.

6 Q. Number four, a different kind, it says

7 "Transsexual surgery or any treatment of gender

8 identity disorder."

9 Do you see that?

10 A. I do.

11 Q. Is that a blanket exclusion?

12 MS. PAYTON: Object to the form.

13 A. Yes, it appears it's a blanket.

14 Q. (By Ms. Hamburger) Okay. Number five, take

15 a look at that, please.

16 Is that an exclusion?

17 A. It is not an exclusion.

18 Q. I read it as -- well, under number five it

19 requires someone to be 18 years or older to get the

20 treatment, is that right?

21 A. That's correct.

22 Q. Okay. So would that be a form of treatment

23 limitation?

24 A. Yes.

25 Q. Okay. And scroll down. Number six -- I

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1 think I might have lost count here. Hold on.

2 Okay, number six. Take a look at that.

3 MS. PAYTON: That's the one that's 1/1/2015

4 Schedule of Benefits?

5 MS. HAMBURGER: Yes.

6 Q. (By Ms. Hamburger) What does that one have?

7 A. This one is a financial limitation.

8 Q. Okay. And it also has under the second  
9 paragraph certain surgeries are considered cosmetic.

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. So it's both a financial limitation  
13 and it excludes certain services but it covers other  
14 ones, correct?

15 A. That is correct.

16 Q. Okay. Number seven, can you take a look at  
17 that. That's the one 6/1/21.

18 Is that a blanket exclusion?

19 A. Yes, it is.

20 Q. Number eight.

21 MS. PAYTON: I'll object to that. Sorry.

22 Belated object to the form.

23 Q. (By Ms. Hamburger) Number eight.

24 A. That is not a blanket exclusion.

25 Q. But how would someone know what's covered or

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1 what's not covered?

2 A. We would refer them to the medical policy.

3 Q. Okay. And if Blue Cross Blue Shield  
4 considers services and supplies leading to surgery to  
5 be excluded -- well, under this exclusion do you know  
6 if Blue Cross Blue Shield of Illinois administers this  
7 as including services and supplies leading to surgery?

8 MS. PAYTON: Object to the form. Outside  
9 the scope.

10 A. I am not a hundred percent prepared to  
11 answer that.

12 Q. (By Ms. Hamburger) Do you have an idea?

13 MS. PAYTON: Same objection.

14 A. My speculation would be that services for  
15 gender reassignment would include anything that was  
16 outside of the surgical realm.

17 So office visits, those kinds of things,  
18 therapy, would all be covered with the exception of  
19 surgery.

20 Q. (By Ms. Hamburger) Based upon your  
21 understanding would a Vantas implant, a puberty  
22 blocker, be considered surgery?

23 MS. PAYTON: I'm going to object to the form  
24 of the question. It's outside the scope. This  
25 witness isn't designated to talk about this.

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1                   You can answer.

2                   A.     Yes, an implant would be considered a  
3                   surgical service.

4                   Q.     (By Ms. Hamburger) And why?

5                   MS. PAYTON: Same objection. Go ahead.

6                   A.     Because it was implanted within the body.

7                   Q.     (By Ms. Hamburger) So anything that is  
8                   implanted within the body is considered surgery by  
9                   Blue Cross Blue Shield of Illinois?

10                  MS. PAYTON: Same objection, scope.

11                  A.     Yes.

12                  Q.     (By Ms. Hamburger) What about an injection?  
13                  Is that considered surgery.

14                  MS. PAYTON: Same objection, scope.

15                  A.     It depends on how the injection is  
16                  administered but some of them do pull a surgery  
17                  benefit.

18                  Q.     (By Ms. Hamburger) If someone is injecting  
19                  testosterone, is that considered surgery?

20                  MS. PAYTON: Object to the form, scope.

21                  A.     I would need the actual procedure code to  
22                  review to determine how it was actually infused or  
23                  implanted in order to answer that question.

24                  Q.     (By Ms. Hamburger) Do most people think  
25                  that an injection is surgery?

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1 MS. PAYTON: Object to the form.  
2 A. In my history at Blue Cross Blue Shield this  
3 is definitely a gray area. However, most times  
4 patients call for those services just to clarify.

5 Q. (By Ms. Hamburger) Okay. Let's turn to the  
6 next example, number nine.

7 It's dated 1/1/2019, Services Related to  
8 Gender Reassignment.

9 A. That's a blanket exclusion.

10 Q. And number ten, tell me about this  
11 exclusion.

12 MS. PAYTON: Is that 1/1/16?

13 MS. HAMBURGER: Yes.

14 A. This exclusion has a dollar cap on it so it  
15 would not be a blanket exclusion. It does have an age  
16 requirement and also medical requirements.

17 Q. (By Ms. Hamburger) Okay. So I've been  
18 trying to think about how to categorize these because  
19 I think they can be put into general categories or  
20 buckets. That's what I've been calling them.

21 So would you agree that there's a category  
22 of exclusions that are total blanket exclusions?

23 A. Yes.

24 MS. PAYTON: Object to the form.

25 Q. (By Ms. Hamburger) And so my read is that

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1 would include examples one, two, four, seven and nine.

2                   Would you just take a look at that and see  
3 if you confirm that you agree with me those are  
4 clearly blanket exclusions?

5                   MS. PAYTON: Object to the form of the  
6 question.

7                   A. Yes.

8                   Q. (By Ms. Hamburger) Okay. And how does  
9 Blue Cross Blue Shield of Illinois administer the  
10 plans with a blanket exclusion?

11                  MS. PAYTON: Object to the form.

12                  A. All services that would fall under this  
13 particular benefit would deny once the claim was  
14 received.

15                  Q. (By Ms. Hamburger) And how would Blue Cross  
16 Blue Shield of Illinois determine whether it falls  
17 under that particular exclusion?

18                  A. Again, we would refer back to that medical  
19 policy.

20                  Q. So would the diagnosis code that the claim  
21 comes in on determine whether it's excluded or not?

22                  A. Yes. It would be diagnosis in combination  
23 with the procedure code.

24                  Q. Okay. And so the diagnosis and the  
25 procedure code together would determine whether

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1 Blue Cross Blue Shield of Illinois considered it to be  
2 gender reassignment?

3 A. That's correct.

4 Q. Okay. And Blue Cross Blue Shield of  
5 Illinois has a standard process for making that  
6 determination?

7 MS. PAYTON: Object to the form.

8 A. Can you clarify your question?

9 Q. (By Ms. Hamburger) Yes. So when Blue Cross  
10 Blue Shield is administering the plans that have total  
11 blanket exclusions, that first bucket, it makes that  
12 determination -- I understand your testimony to be it  
13 makes that determination based on a diagnosis and  
14 service code, correct?

15 A. That is correct.

16 MS. PAYTON: Object to the form.

17 A. That is correct.

18 Q. (By Ms. Hamburger) And when administering  
19 those plans that have the blanket exclusion Blue Cross  
20 Blue Shield of Illinois's standard practice is to look  
21 at the diagnosis and service code to determine if it's  
22 gender reassignment, and if it is then it is denied,  
23 is that right?

24 MS. PAYTON: Object to the form.

25 A. That is correct.

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1 Q. (By Ms. Hamburger) That's the standard  
2 practice, right?

3 MS. PAYTON: Object to the form.

4 A. Yes.

5 Q. (By Ms. Hamburger) Now, there's another  
6 category of exclusions here that say "Services related  
7 to Gender Reassignment Surgery" is excluded, right?

8 A. Yes.

9 Q. And plans that fall in that category are CHI  
10 and example eight, is that right?

11 A. That is correct.

12 Q. Okay. And in those plans -- I mean this is  
13 kind of a little confusing. In those plans is  
14 counseling covered?

15 MS. PAYTON: Object to the form, scope.

16 A. Yes.

17 Q. (By Ms. Hamburger) Would hormonal  
18 prescription drugs be covered?

19 MS. PAYTON: Object to the form, scope.

20 A. Honestly I can't answer that particular  
21 question due to the fact that Common Spirit doesn't  
22 have Blue Cross Blue Shield as their pharmacy carrier.

23 Q. (By Ms. Hamburger) Okay. Fair enough.

24 Would puberty blockers be covered?

25 MS. PAYTON: Object to the form, scope.

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1                   Are you asking generally or are you asking  
2 about Common Spirit?

3                   Q. (By Ms. Hamburger) Under the plans that are  
4 in this bucket number two that excludes services  
5 related to gender reassignment surgery.

6                   MS. PAYTON: Object to the form, scope.

7                   A. Depending on how those devices are implanted  
8 or -- it would depend on if they would require a  
9 surgical implantation or how they were actually billed  
10 to us.

11                  If they fell under a surgical procedure then  
12 they would be denied.

13                  Q. (By Ms. Hamburger) Okay. And so in those  
14 plans would top surgery be denied?

15                  MS. PAYTON: Object to the form, scope.

16                  A. Yes.

17                  Q. (By Ms. Hamburger) And bottom surgery or  
18 genital surgery, that would be denied, is that right?

19                  MS. PAYTON: Same objection.

20                  A. Yes.

21                  Q. (By Ms. Hamburger) Okay. And why do these  
22 plans make a distinction about surgery as opposed to  
23 other forms of gender-affirming --

24                  MS. PAYTON: Object to the form.

25                  Q. (By Ms. Hamburger) -- care?

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1 MS. PAYTON: Object to the form, outside of  
2 the scope.

3 A. I would only speculate personal preference  
4 of that particular client.

5 Q. (By Ms. Hamburger) Any other reason?

6 MS. PAYTON: Same objection.

7 A. Not that they've expressed to me.

8 Q. (By Ms. Hamburger) So there's a third  
9 category that provides coverage with some limitations  
10 like age or financial limitations, is that right?

11 A. That is accurate.

12 Q. Okay. And that includes examples number  
13 five and number three?

14 A. And I believe number ten also.

15 Q. Okay, and number ten. Yes, I missed that  
16 one. Thank you.

17 But in that bucket what is considered  
18 gender-affirming -- what Blue Cross Blue Shield of  
19 Illinois considers to be gender reassignment surgery  
20 is covered, it just has limitations on it, is that  
21 right?

22 A. That is correct.

23 Q. Okay. And then there's a fourth bucket that  
24 I came up with that relates to identifying certain  
25 procedures as cosmetic or excluded but generally

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1 covering gender-affirming care. And that would be  
2 example number six.

3 MS. PAYTON: Object to the form.

4 A. Yes.

5 Q. (By Ms. Hamburger) Do you agree with that?

6 A. I do.

7 Q. Okay. Are there any other type of  
8 exclusions of gender-affirming care administered by  
9 Blue Cross Blue Shield of Illinois --

10 MS. PAYTON: Object to the form.

11 Q. (By Ms. Hamburger) -- that we haven't  
12 identified in those four buckets?

13 MS. PAYTON: Object to the form.

14 A. I would have to say Common Spirit actually  
15 falls even farther outside of these buckets with their  
16 custom approach.

17 Q. (By Ms. Hamburger) And tell me how they  
18 fall outside of this bucket approach.

19 A. So they do include surgery. However, they  
20 do ask to review those claims prior before they're  
21 actually denied.

22 Q. And do they ever approve surgery?

23 A. To my knowledge, no.

24 Q. So the only variation that you've identified  
25 for Common Spirit is that they have some additional

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1 review, is that right?

2 A. That's correct.

3 Q. But they don't provide any different benefit  
4 than what we've discussed in these buckets?

5 A. That's correct.

6 MS. PAYTON: Object to the form.

7 Do a little pause so I can object.

8 THE WITNESS: Sorry.

9 MS. PAYTON: That's all right. Everybody  
10 does that.

11 A. Yes, that's correct.

12 Q. (By Ms. Hamburger) So if we're looking at  
13 the coverage, not the process but the coverage, Common  
14 Spirit and CHI fall into that second bucket that  
15 excludes services related to surgery, correct?

16 MS. PAYTON: Object to the form.

17 A. Yes.

18 Q. (By Ms. Hamburger) Okay. All right. And  
19 just to confirm this is the universe of the exclusions  
20 of gender-affirming care administered by Blue Cross  
21 Blue Shield in these four buckets?

22 MS. PAYTON: Object to the form.

23 A. Yes.

24 Q. (By Ms. Hamburger) Okay. And as we talked  
25 about before, categories three and four are not

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1 Initiatives drafted it, CHI reviewed it and agreed to  
2 administer it, right.

3 A. Catholic Health Initiatives reviewed it and  
4 agreed to administer it yes.

5 Q. Okay. Look at Exhibit 14.

6 (Marked Deposition Exhibit No. 14.)

7 Q. (By Ms. Hamburger) Can you tell me what  
8 this is?

9 A. The plan description for Catholic Health  
10 Initiatives for 2020.

11 Q. Okay. And now let's go down to page 41.

12 A. Okay.

13 MS. HAMBURGER: Omar is trying to get in.  
14 If someone could let him in.

15 THE VIDEOGRAPHER: He's coming in.

16 MS. HAMBURGER: All right. Thank you.

17 Q. (By Ms. Hamburger) Let me look -- I'm sorry  
18 I'm taking a little time to get to 41. Hold on.

19 All right. So in 2020 the coverage changed,  
20 right?

21 A. I think Common Spirit was looking here to  
22 make a further clarification within that benefit.

23 Q. Did the coverage change or not change?

24 A. The way we were administering benefits did  
25 not change. So we were still only sending the

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1 surgical services to Common Spirit and covering the  
2 other services.

3 Q. Okay. So the administration of the plan  
4 remained the same but the wording of the benefit  
5 changed?

6 A. Correct.

7 Q. Did Blue Cross Blue Shield of Illinois  
8 review this wording and comment on it?

9 A. I can't recollect if we made any suggestions  
10 or changes to the 2020 wording.

11 But we do review these and if there's  
12 something that doesn't fall within how we're coded  
13 within our system, we would give them feedback on it.

14 But this particular benefit is how we're  
15 coded.

16 Q. Okay. In 2020 did the CHI plan cover  
17 mastectomies for cisgender women?

18 A. It would be subject to medical necessity.  
19 They would follow our medical policies.

20 Q. But it would be covered, correct?

21 MS. PAYTON: Object to the form.

22 A. As long as the patient met the criteria  
23 under the plan.

24 Q. (By Ms. Hamburger) Okay. So the  
25 mastectomies were covered under the plan for other

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1 purposes than for gender dysphoria, correct?

2 MS. PAYTON: Object to the form.

3 A. That is correct.

4 Q. (By Ms. Hamburger) So you could see how  
5 this language makes it appear that mastectomies for  
6 gender dysphoria, since they are covered under the  
7 plan for cisgender people, would be covered?

8 MS. PAYTON: Object to the form of the  
9 question.

10 A. I'm not sure I could speculate one way or  
11 the other.

12 I think as a consumer I would call and  
13 clarify that with my insurance company.

14 Q. (By Ms. Hamburger) And at the top -- let's  
15 go back up to the Summary of Modifications.

16 A. What page was that on? Still on 41?

17 Q. It's on page two or three of the document.

18 A. Okay.

19 Q. Near the beginning.

20 A. Yes, I'm there.

21 Q. Okay. And here it says, under Summary of  
22 Modifications in 2020, "Adding covered services for  
23 the Treatment of Gender Dysphoria."

24 Do you see that?

25 A. I do.

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1 Q. And it does not call out the exclusion of  
2 surgical procedures, right?

3 A. Not in this language, no.

4 Q. I think you testified that this change in  
5 language did not result in a change in how the plan  
6 was administered by Blue Cross Blue Shield of  
7 Illinois, is that right?

8 A. That is correct.

9 Q. Okay. And has the same language remained in  
10 the CHI SPD since 2020?

11 A. Yes.

12 Q. Okay. I want to turn to the BPAs.

13 A. Okay.

14 MS. PAYTON: Did you want to say something?

15 THE VIDEOGRAPHER: Yeah. Pardon me,  
16 Ms. Hamburger.

17 MS. HAMBURGER: Yes.

18 THE VIDEOGRAPHER: I need to take a break to  
19 change the two-hour tape.

20 MS. HAMBURGER: Sure. Five-minute break.

21 THE VIDEOGRAPHER: We're going off the  
22 record at 11:35 a.m.

23 This is the end of disc one.

24 (Recess.)

25 THE VIDEOGRAPHER: Stand by, please.